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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN JOSE DIVISION**

10 AMERICAN FEDERATION OF
TEACHERS, *et al.*,

11 Plaintiffs,

12 v.

13 MIGUEL CARDONA, *et al.*,

14 Defendants.
15
16

Case No. 5:20-cv-455-EJD

**JOINT STIPULATION TO EXTEND
DEFENDANTS' DEADLINE TO FILE
MOTION TO REMAND; PROPOSED ORDER**

17
18 Plaintiffs American Federation of Teachers, California Federation of Teachers, Isai
19 Baltezar, and Julie Cho, and Defendants Miguel Cardona, in his official capacity as Secretary of
20 Education, and the U.S. Department of Education ("Department"), through their respective
21 undersigned counsel, submit this Joint Stipulation to request that, in light of ongoing discussions
22 between the parties, Defendants' current October 29, 2021 deadline to file a Motion to Remand
23 be extended by one week, to November 5, 2021. The parties state the following in support of
24 their stipulated request:
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1 1. On January 22, 2020, Plaintiffs filed a Complaint for Declaratory and Injunctive
2 Relief, bringing eleven claims under the Administrative Procedure Act (“APA”), 5 U.S.C.
3 §§ 701-706, in a challenge to a Final Rule promulgated by the Department. *See* ECF No. 1.

4 2. Defendants moved to dismiss this action for lack of standing. *See* ECF No. 26.
5 Following briefing and a hearing on Defendants’ motion, the Court issued an Order Granting in
6 Part and Denying in Part Defendants’ Motions to Dismiss on September 3, 2021 [ECF No. 33].

7 3. The parties filed a Case Management Statement on September 21, 2020. *See* ECF
8 No. 35. Defendants filed a Motion for Partial Reconsideration of the Court’s September 3, 2021,
9 ruling on October 1, 2020. *See* ECF No. 38.

10 4. Following briefing on Defendants’ motion, the Court denied reconsideration in
11 relevant part in an Order issued on September 29, 2021. *See* ECF No. 44.

12 5. On October 27, 2021, the parties filed a Joint Stipulation indicating that
13 Defendants intended to file a motion to remand this action to the Department. *See* Joint Stip. ¶ 7
14 [ECF No. 45]. In light of Defendants’ anticipated motion, the parties stipulated and requested
15 that Defendants’ deadlines to file an Answer and Administrative Record be stayed until 30 days
16 after the Court resolved Defendants’ motion to remand. *Id.* ¶ 11. Plaintiffs indicated that they had
17 not yet finalized a decision regarding their position on Defendants’ proposed remand. *Id.* ¶ 9.
18 However, based on the parties’ discussions, Defendants indicated that they planned to file the
19 motion no later than October 29, 2021. *Id.* ¶ 10. The parties indicated that, absent an additional
20 motion, Plaintiffs anticipated filing either an opposition or a statement of nonopposition within
21 14 days of Defendants’ filing. *Id.*

1 6. By Order dated October 27, 2021, the Court approved the parties' stipulation and
2 stayed Defendants' deadlines to file an Answer and Administrative Record, ordering that
3 Defendants' motion to remand be filed on or before October 29, 2021. *See* ECF No. 46.

4 7. In accord with the parties' prior stipulation and the Court's Order, Defendants are
5 prepared to file their motion to remand today and intend to do so, absent a ruling from the Court
6 before close of business today granting an extension. However, in the two days since the parties
7 filed the Joint Stipulation, party representatives have engaged in further discussions regarding
8 resolution of this action and they believe that a one-week deferral will be useful for those
9 discussions.
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11 8. The parties therefore have agreed and respectfully submit this stipulated request
12 that Defendants' deadline to file a motion to remand be extended up to and including November
13 5, 2021.
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15 Dated: October 29, 2021

Respectfully submitted,

16 BRIAN M. BOYNTON
17 Acting Assistant Attorney General
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20 /s/ Kathryn L. Wyer
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**Admitted Pro Hac Vice*

PROOF OF CONCURRENCE

Pursuant to Civil Local Rule 5-1(i)(3), Defendants attest that all Plaintiffs, through their
counsel, have concurred in the filing of this Stipulated Request.

Executed on October 29, 2021, in Washington, D.C.

/s/ Kathryn L. Wyer
KATHRYN L. WYER

ORDER RE DEFENDANTS' DEADLINE TO FILE MOTION TO REMAND

The above JOINT STIPULATION is approved. Defendants shall file their motion to remand on or before November 5, 2021.

IT IS SO ORDERED.

Dated: _____

EDWARD J. DAVILA
United States District Judge